
In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:)	
)	Adversary Proceeding
PATRICIA ANN SCOTT,)	
(Chapter 7 Case <u>98-42919</u>))	Number <u>98-4260</u>
)	
<i>Debtor</i>)	
)	
DANA P. SCOTT)	
)	
<i>Plaintiff</i>)	
)	
v.)	
)	
PATRICIA ANN SCOTT)	
)	
<i>Defendant</i>)	

MEMORANDUM AND ORDER
ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

Before the Court is the motion for summary judgment filed by the Plaintiff, Dana Scott, against the Defendant, Patricia Scott, in the Plaintiff's action to determine the dischargeability of the debt owed it by Debtor. Plaintiff's motion was filed January 19, 1999. By virtue of the Federal Rules of Bankruptcy Procedure, Rule 7056, and Local Rules 56.1 and 7.5 of the Southern District of Georgia, Defendant was given twenty (20) days to respond. Debtor has not filed a response to Plaintiff's motion. I therefore make the following Findings of Fact and Conclusions of Law in accordance with Federal Rule of Bankruptcy Procedure 7052.

FINDINGS OF FACT

Plaintiff is the child of Defendant. In 1987, Plaintiff's father was killed in Bryan County, Georgia. He died intestate and Defendant applied for Temporary Letters of Administration in the Probate Court of Chatham County, and became the legal guardian of her four then-minor children, including Plaintiff. In that capacity, Defendant settled a tort claim of the Plaintiff's deceased father. (Doc. 6, Ex. A). The Probate Court of Chatham County authorized Defendant to receive the settlement funds. (Doc. 6, Ex. B).

By Order dated June 26, 1995, the Probate Court of Chatham County determined that Defendant had wasted and mismanaged the funds entrusted to her as guardian for her four children. (Doc. 6, Ex. C). The Court then entered an order against the Defendant, in favor of the Plaintiff, in the amount of \$ 149,257.95. (Doc. 6, Ex. D).

CONCLUSIONS OF LAW

Summary judgment shall be granted to a moving party if the evidence shows that "there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The rule provides further that:

When a motion for summary judgment is made and supported as provided in this rule, the adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond,

summary judgment, if appropriate, shall be entered against the adverse party.

Fed. R. Civ. P. 56(e). Defendant has not filed a response to the motion for summary judgment. Pursuant to Local Rule 56.1, “all material facts set forth in the statement required to be served by the moving party will be deemed to be admitted unless controverted by a statement served by the opposing party.” This Court finds, therefore, that no genuine issue of material fact exists.

11 U.S.C. § 523(a)(4) states:

A discharge under section 727 . . . of this title does not discharge an individual debtor from any debt ---

(4) for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny.

The Order of the Probate Court finds specifically that Defendant “has committed waste and mismanaged the funds of her Ward.” (Doc. 6, Ex. C). The Court found further that Defendant “failed to account” for those funds. (Doc. 6, Ex. D). Defalcation is the “misappropriation of trust funds or money held in any fiduciary capacity; *failure to properly account for such funds.*” BLACK’S LAW DICTIONARY 375 (5th ed. 1979) (emphasis supplied).

This Court must apply principles of collateral estoppel where the issue has been

decided in a state court action. In re Held, 734 F.2d 628 (11th Cir.1984).¹ I find, therefore, that Plaintiff is entitled to summary judgment as a matter of law. In a state forum it has been adjudicated that Debtor mismanaged and failed to properly account for funds which she held as a fiduciary. This finding is not subject to review by a Bankruptcy Court. The only issue of federal law is whether the findings of the State Court fit the federal definition of a non-dischargeable debt. In this case it is clear that the judgment of the Probate Court is for a debt excepted from discharge under Section 523(a)(4).

O R D E R

In consideration of the foregoing, it is therefore the Order of this Court that the Plaintiff's Motion for Summary Judgment is granted. The debt of \$149,257.95 owed by Patricia Ann Scott to Dana Scott is excepted from discharge.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of March, 1999.

¹ "The doctrine of collateral estoppel bars relitigation of an issue in bankruptcy court for Section 523(a) purposes if three requirements are met: (1) that the issue at stake be identical to the one involved in the prior litigation; (2) that the issue have been actually litigated in the prior litigation; and (3) that the determination of the issue in the prior litigation have been a critical and necessary part of the judgment in that earlier action." Held, 734 F.2d at 629.